

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACKARY ELLIS SANDERS,

Defendant.

Case No. 1:20-cr-00143

The Honorable Judge Ellis

Next Hearing Date: Sept. 11, 2020

**DEFENDANT’S MOTION TO EXTEND BRIEFING
SCHEDULE GOVERNING DEFENDANT’S MOTION TO SUPPRESS**

Zackary Ellis Sanders, by and through undersigned counsel, respectfully submits this Motion to Extend the Briefing Schedule Governing Defendant’s Motion to Suppress. By this Motion, Mr. Sanders respectfully moves the Court to adjust the schedule for the submission of Defendant’s Motion to Suppress and for a Hearing Pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), in light of Mr. Sanders’s currently pending Motion to Compel discovery. Specifically, the defense respectfully requests that this Court extend the current pretrial motions deadline until seven (7) business days from the date the Court rules on the pending Motion to Compel, and that the hearing on that motion be set for approximately three (3) weeks after that extended deadline.

1. The Court set the current briefing schedule at Mr. Sanders’s arraignment on July 10, 2020. The Court ordered the defense to file a Motion to Compel by July 13, 2020; the Government to respond to the Motion to Compel by July 27, 2020; a hearing on the Motion to Compel on July 31, 2020; a pretrial motions deadline of August 20, 2020, and a pretrial motions hearing date of September 11, 2020.

2. At arraignment, the defense explained that Mr. Sanders intended to file a motion to suppress and for a *Franks* hearing, but that because of discovery disagreements with the Government, the defense would first litigate a motion to compel. The Court indicated that it would rule as soon as possible after the hearing on the Motion to Compel on July 31, 2020, to provide Mr. Sanders with sufficient time to incorporate the Court's ruling into his pretrial motions.

3. The resolution of Mr. Sanders's Motion to Compel has involved further submissions than originally anticipated. The defense filed a Reply to the Government's Opposition on July 30, 2020; on July 31, 2020, the Court ordered supplemental briefing from the defense and the Government to be filed on August 10, 2020, which both the defense and Government submitted; on August 12, 2020, the defense filed a Response to the Government's Supplemental Brief; on that same day, the Court ordered that the Government may file a response to Mr. Sanders's Response on or before Wednesday, August 19, 2020, at 5:00pm. The Government has informed the defense that it intends to file a response in accordance with the timeframe set by the Court.

4. As August 19th is the day before the August 20th pretrial motions deadline, Mr. Sanders respectfully moves the Court to extend the original briefing schedule and continue the hearing date.¹ Mr. Sanders has shown in his pending Motion to Compel filings that without the discovery to which he is entitled and that he has moved to compel, he will be unable to effectively present his Motion to Suppress and for a *Franks* hearing and the Court will be unable to adjudicate the suppression and *Franks* hearing issues on an adequate record. Mr. Sanders proposes that Mr. Sanders's Motion to Suppress and for a *Franks* Hearing now be due seven (7)

¹ Mr. Sanders has a right to a ruling on the issues presented in the Motion to Compel, and subsequent filings, in advance of filing his Motion to Suppress and for a *Franks* Hearing. *See, e.g.*, Fed. R. Crim. P. 12)(d); *see also Brown v. Booker*, 622 F. Supp. 993, 995 (E.D. Va. 1985) ("it is important that an appellant's first level right to a ruling by the district judge not be forgotten or foreclosed") (quotations omitted).

business days from the date the Court rules on Mr. Sanders's Motion to Compel, and that the hearing on Mr. Sanders's motion also be moved to a convenient date for the Court approximately three (3) weeks from the Court's resolution of the Motion to Compel.

5. The Government, through Special Assistant United States Attorney William Clayman, has informed defense counsel that it opposes this Motion.

CONCLUSION

Based on the foregoing, Fed. R. Crim. P. 12(d), and Mr. Sanders's rights under the Sixth Amendment and to due process, the defense respectfully requests that this Court extend the briefing schedule previously set by the Court at arraignment and continue the hearing date. Specifically, Mr. Sanders moves the Court to continue the pretrial motions deadline to seven days from the date the Court rules on the pending Motion to Compel, and that the hearing for pretrial motions be set for approximately three weeks from the new motions due date.

Respectfully submitted,

/s/ Jonathan Jeffress

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Counsel for Defendant Zackary Ellis Sanders

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2020, the foregoing was served electronically on the counsel of record through the U.S. District Court for the Eastern District of Virginia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Emily Voshell
Emily Voshell

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[PROPOSED] ORDER

This matter having come before the Court on the defendant's Motion to Extend the Briefing Schedule Governing Defendant's Motion to Suppress, pursuant to Fed. R. Crim. P. 12 and the Fifth and Sixth Amendments to the United States Constitution. Accordingly, for good cause shown, the Motion to Extend the Briefing Schedule Governing Defendant's Motion to Suppress is GRANTED.

The deadline by which Mr. Sanders must file pretrial motions is the ____ day of ____, 2020. The pretrial motions hearing date shall be the ____ day of ____, 2020.

It is so ORDERED.

UNITED STATES DISTRICT COURT JUDGE

Date: _____

Alexandria, Virginia